IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.MC.No. 1991 of 2007()

CC.424/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED NO.2

ABDUL SALAM,
S/O.HUSSAIN, MUSALIYARATH, PILATHARA,
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT

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1. STATE-REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. BASHEER M.P.,
S/O.KHADAR KUNHU,
RESIDING AT MUNDAYATTUPURAYIL,
CHERUTHAZAM VILLAGE, PILATHARA,
KANNUR DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1991 of 2007

Dated this the 21st day of June 2007

O R D E R

The petitioner is accused No.2 in a prosecution for offences punishable under Sections 341 and 323 read with 34 I.P.C. There were other accused in the case. The case against the other accused has been compounded. The petitioner/accused is employed abroad. The complainant has compounded the case and is willing to appear before the learned Magistrate and inform the learned Magistrate that the matter has been compounded. The learned Magistrate is not entertaining such request, it is submitted.

2. Has any order been passed by the learned Magistrate? Did the complainant and the accused make any application before the learned Magistrate? There is nothing to show that any such application has been filed under Section 320 Cr.P.C. Composition can be made by the persons named in column 3. Composition is therefore an act to be performed by the person mentioned in column 3. It is not necessary to ritualistically insist on the personal presence of the accused to facilitate such composition. It is not possible to assume from the word “composition” that both parties must appear before the learned Magistrate to report composition. If the person shown in the

third column reports to the learned Magistrate that composition has been effected under Section 320 Cr.P.C, I am certainly of the opinion that such composition can be accepted without insisting unnecessarily on the personal presence of the accused to facilitate such composition. No precedents contra have been brought to my notice. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate through his counsel and pray for exemption from appearance to facilitate composition.

3. I find no reason why, if such a prayer is made, the learned Magistrate cannot accept the composition. The petitioner can appear through counsel and make the application. Respondent can appear in person and report to the learned Magistrate that the composition has been made and can be accepted. The learned Magistrate must pass appropriate orders. It is not necessary, for this purpose, to invoke powers under Section 438 Cr.P.C.

4. This Criminal Miscellaneous Case is in these circumstances dismissed but with the above specific observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007